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December 3, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room TW-325  
445 12<sup>th</sup> Street, S.W.  
Washington D.C. 20554

**RE: In the Matter of Petition of Verizon for Forbearance in Boston, New York, Philadelphia, Pittsburgh, Providence, Virginia Beach Statistical Areas, WC Docket No. 06-172**

Dear Ms. Dortch,

On behalf of Time Warner Telecom Inc. (“TWTC”), this letter responds to a recent Verizon *ex parte* letter in which Verizon misquotes and misleadingly ignores the context of statements made by TWTC’s Chairman and CEO Larissa Herda regarding RBOC special access rates and terms.<sup>1</sup>

In its November 21, 2007 letter, Verizon seeks to change the subject from the lack of evidence supporting its forbearance petitions to its special access rates. In doing so, Verizon alleges that Ms. Herda admitted in an October 2, 2007 hearing before the House Committee on Energy and Commerce that “the actual prices paid for special access have in fact declined.” *See Verizon Letter* at 5-6. It goes on to state that Ms. Herda “acknowledged [at the hearing] that ‘if you see the prices, they look they’re going down.’” *Id.* n.23 (quoting hearing transcript with no source for transcript cited). In reality, Ms. Herda said *exactly the opposite*. According to the hearing transcript, Ms. Herda’s actual statement was as follows: “[i]f you see the prices, they look *like* they are going down as the result of these long-term contracts that are very, very bad for us.” (emphasis added).<sup>2</sup>

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<sup>1</sup> See Letter of Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-172 (filed Nov. 21, 2007) (“Verizon Letter”).

<sup>2</sup> Transcript, *Hearing of the Subcomm. on Telecomm. and the Internet of the House Comm. on Energy and Commerce, Subject: Digital Future of the United States, Part VI: The Future of Telecommunications Competition*, at 20 (Fed. News Serv. Oct. 2, 2007) (“Transcript”).

The use of the word “like” shows that Ms. Herda distinguished between the appearance of lower prices and the reality, in which Verizon and other ILECs continue to charge monopoly-level rates for special access.

Indeed, Ms. Herda’s broader point, which Verizon ignored but is clear from her testimony, is that in order to obtain *merely* monopoly special access rates, TWTC must agree to unreasonable terms and conditions. Several moments before the passage quoted above, she stated that,

I think that the statement that their [special access prices] have gone down is extremely misleading. In fact, the sticker price has gone up, but what they’ve done is that they’ve been locking up companies, customers, end-user customers as well as carriers into these long-term contracts that I not so affectionately refer to as the heroin drip. The more you buy the more you have to buy in order to be able to get the discounts where you can be competitive, and every year, the requirement gets higher and higher and higher.”

*Transcript* at 20. The penalties for not meeting volume and circuit commitments are a key reason why a viable wholesale special access market has not developed: “In fact, you know, we’ve been -- Mr. Forsee [of Sprint] over there has major commitments. We have major commitments. I’ve tried to sell to Sprint and the problem is we can’t bring our prices low enough to make up for the penalties that Sprint would have to pay if they move some of their services to us because they’re not meeting those commitments.” *Id.*

Verizon’s distortion of Ms. Herda’s statement is merely one example of Verizon’s factual overreaching in this proceeding. For example, although Verizon repeats *ad nauseam* its assertion that competitive carriers have not provided any information regarding their own facilities deployment in this proceeding<sup>3</sup>, TWTC, among others, has provided the Commission with the number of lit buildings that it serves in the New York MSA (the only one of the six MSAs at issue here that TWTC serves) and the capacity of these facilities, and it has quantified the high percentage of locations where it must rely on Verizon’s facilities in the New York MSA.<sup>4</sup> TWTC is not the only carrier to point out Verizon’s casual relationship with the truth. As Alpheus *et al.* reiterated just today, the FCC has only granted forbearance from UNE obligations where competitors have achieved both sufficient facilities-coverage and retail market-share in the relevant geographic areas.<sup>5</sup> Although Verizon tries to re-write history to say that facilities-coverage is the only relevant consideration, this is simply not so. *See id.* at 1.

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<sup>3</sup> See, e.g., Letter of Evan T. Leo, Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-172 (filed Nov. 16, 2007).

<sup>4</sup> See Letter of Thomas Jones, Counsel, Time Warner Telecom *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-172 at 7 (filed Nov. 26, 2007) (*citing* Opposition of Time Warner Telecom *et al.*, WC Dkt. No. 06-172, at 20, 21, n.56 (filed Apr. 17, 2007)).

<sup>5</sup> Letter of Andrew D. Lipman, Counsel, Alpheus *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-172 (filed Dec. 3, 2007).

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In any event, as this discussion demonstrates, Ms. Herda did not state that special access rates have declined. Moreover, based on the record in this proceeding, it is clear that there is insufficient facilities-based competition to constrain Verizon's tariffed rates for DS1 or DS3 services absent UNE and dominant carrier regulation in the six MSAs at issue in this proceeding. Those petitions should therefore be denied.

Respectfully submitted,

/s/

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Thomas Jones  
Jonathan Lechter

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